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NOTES OF THE WEEK

The Camera Cannot Lie

Although certain evidence may be clearly admissible its value is a matter to be assessed by the court to which it is tendered. It is a matter of common experience that the impression given by a photograph is not always the same as that which would be obtained if one could see the scene or object which the photograph portrays. This fact should be present to the mind of magistrates who, in trying cases of dangerous driving or similar charges, are asked to take into account photographs produced to them which are proved to have been taken by a camera from a police car at the time the incidents which are under investigation were occurring.

The value of such photographs was challenged by a defending advocate in a case reported in the *Daily Express* on February 21, 1957. Photographs had been taken by a box camera fixed to the windscreen of a police car and it is stated in the report (which concerned the hearing of an appeal) that they had led to the conviction of a van driver for dangerous driving. On the hearing of the appeal it was submitted on the appellant's behalf that the photographs were misleading and utterly useless. A professional photographer was called and said in evidence that the lens in the camera was not suitable for action photographs from a moving car, that it produced a false perspective and an illusion that vehicles were closer together than they actually were.

The submission did not succeed. We do not know, since it is not stated in the report, what other evidence was before the court, but the learned chairman is reported as saying that it was a clear case of dangerous driving. He also took the view that the penalty which had been imposed, one of £10, was wholly inadequate and he increased it to £25.

It does seem that although a court could not be expected ever to decide a case purely on the evidence of photographs taken in this way, such photographs can have great value in enabling a court more easily to appreciate the evidence given by eye-witnesses describing what they say they saw. It is, however, important, that such photographs should be the best obtainable, by which we mean that cameras should be used which are best adapted to produce true pictures in every sense of the word.

Manners Maketh Man

Youth, one hopes, will learn by experience, and a boy pedestrian in Brighton has had the opportunity to learn, from his experience in appearing before the Brighton juvenile court by which he was fined 10s., that s. 14 of the Road Traffic Act, 1956, is now in force.

A report in the *Evening Argus*, Brighton, on February 14, records that this boy, aged 16, was one of a group of pedestrians who were being signalled to by a police constable to wait at a junction while the constable allowed traffic to proceed. The boy walked out into the road, but was held up by the traffic. The policeman told him to return to the pavement, but the boy, with the rudeness and bumptiousness which now, unfortunately, are all too common at that age, said, "You can't talk to me like that," and continued to cross the road so that the traffic had to stop.

The boy pleaded not guilty, said that there was no traffic and denied seeing the policeman's signal, but as we have said he was fined 10*s*. We can only hope that the payment of this fine will affect him sufficiently to make him reflect that it would have been better had he not behaved so thoughtlessly and foolishly. He might also remember that had some car drivers, relying on the policeman's signal in his favour, been unable to stop quickly enough he might have found himself in hospital as well as in the juvenile court.

False Pretences and the Motive

In most cases of obtaining property by false pretences the motive, as in most cases of stealing, is to obtain something of value without paying for it. Instances arise occasionally in which some other motive, possibly spite, prompts the offence for which it is otherwise difficult to account.

At Oxford recently a man was committed for sentence to quarter sessions on a charge of obtaining certain drugs by false pretences with intent to

defraud. He had pleaded guilty. According to *The Birmingham Post*, the evidence was to the effect that the defendant went to hospital complaining of pain as the result of an accident, and it being thought that there might be a rupture of the kidney, drugs were administered. Next day a casualty officer recognized the man as one who had told a similar story at a Cambridge hospital and been given drugs. It was found that he had a number of convictions for similar offences. The defendant, it was stated, had said he had acquired a liking for drugs after leaving the Services.

As the value of the drugs administered was only a shilling or so, it appears clear that financial gain did not come into consideration at all, but that an addiction to narcotic drugs caused him to resort to this method of deception as the only way in which he could satisfy his desire.

Fresh Probation Order Following Breach

The decision in the case of *R.* v. *Havant Justices, ex parte, Jacobs* [1957] 1 All E.R. 475, settles a point which, as Lord Goddard observed in his judgment, was one which has caused justices and their clerks much doubt. It is now clear that where a probationer is brought back under s. 6, Criminal Justice Act, 1948, he may be dealt with for the original offence by the making of a new probation order. *Pari passu*, it follows that a probationer brought back under s. 8 for the commission of an offence during the currency of a probation order could also be again put on probation for the original offence.

What is not quite clear is the procedure to be adopted concerning the first order.

Section 5 (4) of the 1948 Act provides that where a probationer is sentenced for the offence for which he was put on probation, the probation order shall cease to have effect. "It is clear," Lord Goddard said, "that for a breach of an order the justices can sentence the probationer to prison. The probation order could have no effect during the sentence of imprisonment." This might seem to suggest that the probation order will become effective after the sentence has been served, but it is obvious from s. 5 (4) that the sentence puts an end to the probation order once and for all.

If, however, the justices do not sentence for the original offence, but make a fresh probation order, s. 5 (4) does not come into operation, as s. 3 (1) provides that a probation order is made instead of a sentence.

Strictly, therefore, two probation orders will exist side by side in respect of the same offence. The first order, the Lord Chief Justice pointed out, "though not formally discharged, will be ineffective."

This must be so as it is inconceivable that further breaches could possibly lead to two sentences in respect of the same offence.

At the same time, and this does not in any way conflict with the view of the Queen's Bench Division, many probation officers would prefer, if only for the sake of "tidiness," formally to apply under para. 1 of sch. 1 to the 1948 Act, for the discharge of the first order. If the court is also the original court such an application can be made immediately on the making of the new order, when the position can be made abundantly clear to the probationer. If the court is not the original court application is required to be made to the latter court, but the defendant need not appear in person at the actual hearing of the application.

Housebreaking

In the *Western Mail* of February 26 there was an account of the appeal of one Balmforth, aged 27, against a sentence of seven years' imprisonment passed by quarter sessions. In delivering the judgment of the Court of Criminal Appeal dismissing the appeal the Lord Chief Justice said it was a lamentable case. As Balmforth had told the police, he could not resist temptation or keep his fingers off other people's property.

It had been reported to the Court that he had spent the greater part of his life in one form of detention or another. If he were 30 his case would be one for preventive detention in order that the public might be protected.

Although the amounts he stole were not large, it had to be remembered that housebreaking caused not only disturbance and unhappiness but very often alarm to people.

It is often suggested that minor cases of housebreaking should be triable summarily by consent of the accused, and there is much to be said for the proposal. What a case like this serves to emphasize is that even if magistrates' courts are given the jurisdiction, they would need to exercise it with considerable discrimination. Doubtless there would be some statutory limitation based on the value of any property stolen, but that would not be by any means the only point to be taken into consideration. As the Lord Chief Justice observed, these offences may involve alarm, and this is a serious element of the offence. Possibly no property has been stolen, but if people have been put in fear the case cannot be regarded as anything but serious. Magistrates, having due regard to the words of s. 19 of the Magistrates' Courts Act, will consider whether there has been an aggravation of the offence in the form of causing alarm, and whether in the circumstances they should give the defendant the option of summary trial, or commit him to quarter sessions.

Adoption: Consent of Parent

Decisions like *Hitchcock* v. *W.B.* [1952] 2 All E.R. 119, and *Re K.* (*an infant*) *Rogers* v. *Kuzmicz* [1952] 2 All E.R. 877, show that in adoption proceedings the consent of a parent must not be dispensed with lightly, and that there must be strong reasons for holding that such consent is unreasonably withheld. It is also clear that the withholding of consent should not be held to be unreasonable merely because a documentary consent had been given and subsequently withdrawn.

In *Re F.* (*an infant*), (*The Times*, March 1), Harman, J., delivering judgment, in court, refused to make an adoption order and emphasized these principles. He said that even when adoption was unopposed it must be looked at with great circumspection owing to the momentous change which might be made in the child's life.

The mother of the infant having been in ill-health, the infant was entrusted to the care of the applicants, who were friends of the parents. At one time it seemed unlikely that the mother would recover her health and an adoption agreement was entered into, the parents agreeing not to oppose any application for an adoption order. The mother made a wonderful recovery, however, and the parents wished to have their child handed back to them.

The learned Judge considered it a suitable case for adoption, apart from the attitude of the parents, who were resisting the application. There was much to be said for all the parties, but it could not be held that consent was unreasonably withheld when the parents knew, loved and wished to bring up

their child. The consent in the agreement was never irrevocable, and the statutory form of consent could be withdrawn up to the very last moment before an adoption order was made; then only did it become irrevocable. He expressed great sympathy with the applicants, but could not grant an adoption order.

Possession of Explosives

Words like "wilfully" and "knowingly" in statutory provisions do not always mean the same as they mean colloquially, and there have been various decided cases on the meaning of such words. Thus in considering the word "wilful" there may be argument as to whether in the particular section under consideration it is enough to prove that the defendant's act was intentional and not accidental or whether he must be shown also to have intended the consequences of his act. Of course the presumption that a person intends the natural consequences of his own acts has to be considered.

When the description of an offence includes the word "knowingly" there may be a question about the words to which that applies, as was illustrated in *R.* v. *Hallam* (*The Times,* February 26), which came before five Judges in the Court of Criminal Appeal.

The appellant had been convicted of an offence against s. 4 (1) of the Explosive Substances Act, 1883, of knowingly having in his possession or under his control certain explosive substances, to wit 15 pieces of gelignite and 34 detonators, under such circumstances as to give rise to a reasonable suspicion that they were not in his possession or under his control for a lawful object.

In delivering the judgment of the Court the Lord Chief Justice said the question was whether "knowingly" meant that he must not only know that he had some substance in his possession, but also that it was an explosive substance. The Court thought that the words "knowingly has in his possession any explosive substance" must mean that he must know that it was an explosive substance. The Court could not take the view that was taken in *R.* v. *Dacey* [1939] 2 All E.R. 641, that it was enough for the prosecution to show that the man had in his possession something that turned out to be explosive provided that there was some evidence of suspicious circumstances. The true meaning of the subsection was that the man must know that they were explosive substances.

Although this particular point was decided in favour of the appellant the appeal was, in the result, dismissed.

Demanding Property with Menaces with intent to Steal: Committtal to Assizes

A charge brought under s. 30 of the Larceny Act, 1916, is one which quarter sessions have jurisdiction to try, but in *R.* v. *Hacker* (1957) 1 W.L.R. 455, the Lord Chief Justice made the following remarks when dealing, in the Court of Criminal Appeal, with such a case. "It is impossible to find any ground on which we could give leave to appeal. "The conviction was the only possible one, but I want to say this: The applicant was tried at the Andover borough quarter sessions, being sent there under s. 10 (1) of the Magistrates' Courts Act, 1952, which enabled him to be sent to any convenient court if the Assizes were not being held at any particular time. The Court desires to say that the case was admirably conducted by the recorder, and his summing-up was as good as could be desired, but generally speaking, a case of this gravity, blackmail, ought not to go to quarter sessions; it ought to be sent to the Assizes. It is true that this is not an offence under s. 29 of the Larceny Act, 1916, which imposes a maximum sentence of imprisonment for life; it is an offence under s. 30 for which five years' imprisonment is the maximum; *but I hope magistrates will take note that as a general rule charges of blackmail ought to be sent to Assizes and not quarter sessions, unless there is some very compelling reason.*"

The committal to Assizes of cases which are triable at quarter sessions is dealt with in s. 11 of the Magistrates' Courts Act, 1952, the ground being that "the court is of opinion that there are circumstances that make the case an unusually grave or difficult one, or that serious delay or inconvenience would be caused by committal to quarter sessions."

Borrowing and Embezzlement

Many who are convicted of fraudulent conversion, embezzlement or larceny as servant, say they intended to repay the money they took, and no doubt this is often true. It is rarely a good defence, however. The fact that there is an intention to repay at some future date, and even a belief coupled with that intention that it will be possible, is no answer, *R.* v. *Williams* [1953] 1 All E.R. 1068; 117 J.P. 251, though it may be some mitigation.

In *The Birmingham Post* there is an account of the prosecution of a young conductress employed by the Derby corporation who pleaded guilty to charges of embezzlement. It was alleged that she took part of her receipts on several occasions, and stated that it was a common practice for staff to do this and have the amount deducted from wages at the week-end. The prosecution told the court that these deficiencies caused a great deal of trouble, and an official of the corporation subsequently said that the practice had been disapproved and notices had been posted informing staff that it was forbidden.

The defendant was put on probation, and it should now be realized that this kind of borrowing may lead to criminal proceedings.

Hire-purchase Label

Lawyers and social workers may at first sight be attracted by a suggestion thrown out by Mr. Justice Hilbery at Shrewsbury Assizes. He had before him a young soldier who had obtained a motor cycle priced at £163 on hire-purchase, paid off £6, and then sold it for £50. The Judge's suggestion was that every article bought on hire-purchase should bear a plate stating the fact, and that it should be a criminal offence to remove the plate until the last instalment had been paid. "I do not (said the Judge) know why it cannot be done. . . . I dare say people taking goods on hire-purchase would be disinclined to accept such a plate, but this is merely a matter of vanity." A spokesman of the Hire Purchase Trade Association is said to have agreed that the fixing of such a plate would make larceny more difficult, but also to have commented that the public would object —the average householder would not want a hire-purchase plate on the new furniture. We are inclined to think this comment is beside the point. Since the object would not be to discourage hire-purchase, but to make theft more difficult, there would be no need to fix the plate in a position on furniture where it would be seen by visitors, or upon a car or motor cycle in a position where it would be obvious to passers-by. It would serve its purpose if screwed on inside the bonnet of the car. The person to whom a vehicle or a piece of furniture was offered for sale would know where to look for it, and incidentally, the owner would be protected to some extent against having the article stolen from him, if the idea was workable at all.

What seems to us a fatal objection is more practical. The Judge proposed that it should be a criminal offence to remove the plate prematurely, but how could this be enforced? The honest man who buys an article with the intention of keeping it for use could easily remove the plate and nobody would know, since neither the national finances nor public opinion would support an army of inspectors, going round to verify that hundreds of thousands of hire-purchase plates had not been tampered with. When the young soldier at Shrewsbury entertained the surprising notion that he could get away with the transaction which was the occasion of the Judge's remarks, and decided to commit the major offence of dishonesty by selling the motor bicycle, he would hardly have been deterred by the incidental necessity of a minor offence—he would surely have taken the precaution of removing the plate from the motor bicycle before he offered it for sale.

Asking for Trouble

An enormous amount of time and money are spent by the police, by highway authorities and by many other people in efforts to reduce the number of accidents caused by modern traffic conditions. The least the ordinary road user can do is to avoid actions which are obviously likely to cause an accident, but unfortunately not a day passes without its accident or accidents which could so easily have been avoided by the use of ordinary common sense on the part of someone involved. For example, on February 26 the *East Anglian Daily Times* reports the prosecution of a woman cyclist for failing to conform to a traffic signal. The circumstances were that this lady, who was 70 years of age, came to a junction, disregarded the traffic signal and was involved in a collision with a car. She bruised her side, and her cycle was damaged and she admitted that "she knew she hadn't a leg to stand on." Why then, did this elderly lady behave in this foolish and dangerous fashion? Her explanation was that, at her age, she had difficulty in getting on and off her cycle and therefore she "just took a chance." It was a chance which might have led to her death, and to the unfortunate car driver having the memory that, through no fault of his own, he had killed her. She was fined £1. One can only hope that, with the accident, this will persuade her that taking a chance does not pay.

Maintenance Arrears and Deductions from Wages

In view of the discussion, in Parliament and elsewhere, about the possibility of attachment of wages to satisfy arrears due under maintenance orders, it is of interest to note once again what has been done, on a voluntary basis, in the city of Sheffield.

In his report for the year 1956, Mr. Leslie M. Pugh, then clerk to the justices (now stipendiary magistrate for Huddersfield), referred to the success of the practice during more than nine years of advising both complainant and defendant when arrears have accrued. In 1947 it was necessary to advise the parties in 28 *per cent.* of all the orders in force that arrears had been incurred, but by 1956 this figure fell to 6.6 *per cent.* He adds, "Frequently employers at the request of an employee, have deducted from wages the amount due on an order and sent it direct to the court. Such arrangements have worked most satisfactorily. I have cause to be grateful for this co-operation, and I believe it has been very helpful to the men concerned. It must of course, be emphasized that it is a voluntary arrangement made at the request of the employee."

If the system works well on a voluntary basis and without objection from the employer there is ground for thinking it would work well under an order of the court. Men who disliked the idea of deductions from wages would be stimulated to pay more regularly. We believe the number of cases in which attachment would be necessary might prove less than expected. At all events no individual employer would be troubled with many such cases, and an employer or a wages clerk who is accustomed to dealing with P.A.Y.E. would not find it difficult to cope with deductions under maintenance orders.

Compounding a Felony

Prosecutions for compounding a felony are almost as rare as those for misprision, although it is possible that, in fact, many minor cases of felony are compounded without realization of the fact.

In a case at the Derbyshire Assizes reported in *The Birmingham Post,* a grocer pleaded guilty to two cases of compounding a felony. It was alleged that after missing cigarettes he questioned his staff and subsequently two youths admitted that they had been pilfering for some time. The grocer then said he would have to prosecute unless the stolen articles were paid for, and this was repeated to the parents of the youths. Deductions were made from wages and payments were made by one of the parents. To the police the defendant said he did not intend to prosecute, and wished to keep the youths out of court.

Counsel for the defendant submitted that it was understandable that an honest man who has been plundered by a dishonest servant should not regard himself as receiving a reward when all he is conscious of doing is taking steps to recover what belongs to himself.

Pearce J., making an order of conditional discharge, said to the defendant, "It is quite apparent that you had no dishonest or improper purpose."

The offence of compounding has been defined as the taking of a reward from a felon by the party robbed or otherwise injured, or in the case of theft the taking back of the stolen goods, upon agreement not to prosecute. It is more than merely refraining from prosecuting; there must be a bargain. As Professor Kenny put it, "You may show mercy, but you must not sell mercy."

Out of Quarantine

We have not seen in the English newspapers any mention of a judgment by the Supreme Court of the United States which was delivered on February 25, and seems from Alistair Cooke's *Letter from America,* broadcast on March 3, to open a new chapter of legal and literary history in the English speaking world. We may be able to speak further of this judgment when the text becomes available. According to the broadcast, the full Court of nine Judges concurred in a decision by Mr. Justice Frankfurter, which seems to have followed closely the line taken by our own Stable, J., in *R.* v. *Warburg (Martin Secker), Ltd.* [1954] 2 All E.R. 683, where he said the book before him "had to be judged on today's standards," and put the question: "Are we going to say in England that our contemporary literature is to be measured by what is suitable for a 14 year old schoolgirl to read?"

The test of suitability for a schoolgirl had, as we reminded readers in 1954, been made the subject of a protest from the bench 41 years earlier, by one of the most eminent American lawyers of this century (Judge Learned Hand) in *United States* v. *Kennerley,* and it seems that his opinion of what the law

should be has at last gained the status of a constitutional principle, which, as declared by the Supreme Court, overrides legislation in 11 of the United States: we take this figure from Mr. Cooke's broadcast.

The new case originated in Michigan, which had legislation resembling the (English) Obscene Publications Act, 1857. A bookseller had a book in stock which he thought might, in police eyes, fail to pass the test—he deliberately sold it, we are told, to a policeman, in hopes that the issue would be raised. Whether the police fell into a trap, or were collaborating with the bookseller for the sake of a test case, may be shown when reports become available. Be this as it may, there was a prosecution and conviction; in due course the case reached the Supreme Court which quashed the conviction.

The great merit of this decision is that it was not given only on the facts but upon the ground that the Michigan statute was unconstitutional and void. It will therefore, so far as it extends, render inoperative existing statutes in the same sense in all States of the Union, and make it impossible to enact new statutes in that sense.

We have just used the limiting words, "so far as it extends," because we do not yet know, for example, how it will affect legislation dealing with imported works, such as was before the District Court in New York, and afterwards before the United States Circuit Court of Appeals under the presidency of Judge Augustus Hand in 1934, when *Ulysses* had been siezed by the collector of customs under the Tariff Act, 1930, which was a federal statute.

In the United States, at any rate so far as concerns books published internally, it will in future be impossible to have the inconsistency of decision now possible in England, as was shown when the schoolgirl test, rejected as a standard for adults by Stable, J., was immediately afterwards adopted almost in terms by the Recorder of London in *R.* v. *Hutchinson and Others* (1954); *The Times,* September 18—"the mind of a callow youth or a girl just budding into womanhood."

It may be hoped that the American decision, when available for study in this country, will attract enough interest, not among lawyers only, but generally amongst educated people, to strengthen the demand for introducing some rationality into the English law upon the subject. An English statute, however ludicrous, can never be unconstitutional, and the bearing of the decision is no more than indirect. But the unanimous opinion of the full Court, one of the world's most powerful organs of the human intellect, upon the question of what adults ought to be allowed to read, must surely have some influence even in this country. The heading to this Note we owe to Mr. Cooke, who thus described the effect, as he saw it, in making reading matter available to grown-up people in the United States.

Unconsidered Trifles

At p. 94, *ante,* we noticed the case where two men employed to collect house refuse were held guilty of larceny, because in course of collection they took from the refuse some article which they could sell. This was the decision of the Divisional Court in *Williams* v. *Phillips*; *Roberts* v. *Phillips,* p. 101, *ante*. A less formal and slightly more ample account of the decision than is given there or in *The Times* appears in the *Manchester Guardian*. We have had a similar question in different forms, and have advised that refuse put by the householder into an ordinary bin, as used in towns, cannot be considered to have been immediately abandoned by him so as to be capable of lawful appropriation forthwith by anybody else: *see* 118 J.P.N. 644. Nor has it (we have said) become the local authority's property: if the householder changes his mind about some object which has been put into the bin, he has a right to take it out: *ibid.*, and *see* 114 J.P.N. 560. This must be so while the bin is standing on his property, notwithstanding the mention of a "forecourt" in s. 76 (3) of the Act of 1936, *infra*. We had taken the view that the same applied, even where the bin had been (rightly or wrongly) placed upon the highway to await collection of its contents, and in the decision now given Lord Goddard, C.J., has said that this is the position. Parliament has stepped in and created a new summary offence, in s. 76 (3) of the Public Health Act, 1936, but we do not think the owner has lost his right of going out and retrieving something he has put into the bin by mistake, or some object for which after all he has some use. As soon, however, as the contents have been taken over by the local authority's collectors, the property (we have said) passes to the local authority, either upon the principle that it has at that stage been abandoned by the former owner, as we suggested in an answer at 119 J.P.N. 564, or perhaps better upon the ground that he has given it to the local authority to be disposed of. It has been well known that the collectors often sorted through house refuse at some stage, and it has been common enough to see a local authority's dustcart halted in a quiet road while the men went through the load and put various objects into sacks. It was a natural conclusion that this was no part of their duty, since sorting which was done on behalf of their employers would surely be done at the council's yard or depôt, and not in a public street. The practice was, however, so long established that before the Divisional Court it was seriously argued as a claim of right on behalf of the convicted men. The collector of refuse is a difficult type of labour to recruit (so much so that in some towns the work seems to be largely in the hands of coloured immigrants), and, when it came to be realized by local authorities that a good deal of this refuse could be salvaged at a profit to the ratepayers, they found it desirable to make agreements with the men by which the latter received a proportion of the profit in addition to their wages. Some such agreements went to great lengths in the war, when the object was to recover valuable materials for use again, rather than to make a profit by doing so. At Bristol, where the prosecutions occurred which were before the Divisional Court, it is stated at p. 95, *ante,* that there was an agreement between the corporation and the men's trade union, under which salvage had to be brought to the corporation's depôt, where it was sold, the proceeds being shared between the corporation and the men. The existence of this agreement made it the more remarkable that the men believed, according to their counsel, that they had a right to pick out articles from the refuse, before it reached the depôt. By so doing they were not merely depriving their employers of a share in the contemplated profit, but they were also depriving fellow workmen of a share.

The New Freedom

In proposing his new block grant the Minister of Housing and Local Government claimed that central supervision would be reduced. That there will be some sort of a reduction is no doubt true, but the extent of the reduction is the really interesting and vital point: if there is to be no relaxation of supervision other than that arising directly from central examination of grant claims the benefit will be small indeed.

Local administrators can call to mind an extraordinarily large number of examples of control nominally justified by the grant of monetary aid, but in reality created by the determination of the centre to control local actions and decisions. We do not suggest that some, at least, of these controls are necessarily bad but if they are to be continued Mr. Brooke will find it difficult to demonstrate that the advantage he has claimed for the block grant system does in fact exist to any worthwhile degree.

We mention two examples, the first arising out of the care of children and the second concerned with the education service. Home Office Circular No. 15 of 1950 limits the amount of grant on expenditure incurred by local authorities on boarding out and on persons who are being given regular assistance under s. 20 of the Children Act to an average of 40*s.* per head per week. Prior to the announcement of the new block grant proposals the local authorities association were preparing to make representations for an upward revision of this figure in view of changes in the value of money since the date when it was announced: these proposals presumably will now be dropped. Two interesting points then arise. The first is whether the Home Office are prepared to throw overboard with the children's grant their control of this large and important part of expenditure on the service. (The 1950 circular was careful to mention that it was no part of the intention of the Secretary of State that the arrangements then made should lead to indiscriminate increases in the allowances paid to foster parents). The second concerns the weighting of the block grant to allow for justified increased expenditure in cases such as this: under the new system how many years will the local authorities have to wait before securing an exchequer contribution towards the increased burden ?

Our second example relates to education. It is accepted that the education service is being provided in accordance with national policy and because of that fundamental reason there has been little disposition to quarrel with Ministerial controls, even such as that in S.R. & O. No. 666 of 1945, which gives the Minister power to approve the local authority devised income scales which grade and determine the amount of assistance given from public funds to university students. The Minister has made considerable use of his powers here to secure a closer approach to national uniformity which is of great importance to many thousands of parents. On this matter as in so many others affecting education we cannot imagine that unfettered local rule will be allowed to operate and in our view it is right that it should not operate: uncontrolled freedom would be unlikely to serve best those for whom education is provided.

But it all makes very dubious the advantages urged by Mr. Brooke in support of his block grant.

Names on Vehicles

In connexion with our Note of the Week at p. 64, *ante*, a correspondent reminds us that the requirement in s. 76 of the Highway Act, 1835, was paralleled in s. 59 of the London Hackney Carriage Act, 1831. We had not mentioned this in the Note, because the questions we were discussing had come to us from the provinces. The London Act of 1831, like many of that time, has a slightly misleading title; it was not confined to hackney carriages, and s. 59 required the owner of every waggon, wain, cart, dray or other such carriage driven or used in any public street within five miles from the General Post Office in London to have its owner's name and abode painted on the off side. This was a precursor of s. 76 of the Highway Act, 1835: it is often overlooked that a good deal of that Act was based, like so much of the legislation of that period, upon earlier local Acts. It is likely, though we have not thought it worth while to look into the matter, that other early statutes in large towns contained a similar enactment, just as some exceptional powers given to the metropolitan police by their special Acts a century and more ago occur also (in slightly different words) at Liverpool and elsewhere. Our correspondent suggests that when the Road Traffic Act, 1930, repealed s. 76 of the Highway Act, 1935, so far as it applied to motor cars, the parliamentary draftsman and the advisers of the Minister of Transport overlooked s. 59 of the London Hackney Carriage Act, 1831. We do not think this is the explanation, amongst other reasons because several other entries in the schedule of repeals relate to the London Acts governing hackney carriages. More probably it was not desired to deal with local Acts, except so far as was necessary to get rid of old local provisions about omnibuses, in order to make local legislation fit the new law about public service vehicles. Be this as it may, we are told that the London provision is treated by the metropolitan and city police as obsolete, and it might be worth while at some convenient opportunity to make the law uniform throughout the country, even though, as we said in our earlier Note, such a provision seems to possess some merit.

DOG'S DELIGHT

By J. E. SIDDALL

According to the B.B.C., the dog is being supplanted in English affections by the budgerigar. In fact, fur and feather are apparently neck and neck for the first place.

Despite its inauspicious beginning, the dog has held a favoured place in British law. He does not even involve the person in charge of him under the byelaws for good rule and government unless he is firmly attached by a lead. But in the beginning he was viewed with suspicion and had to be lawed under the Forest Charter of 1297. Three claws of the forefoot were to be cut off, but that could only take place where it had been previously the custom. The lawing of dogs in the forest was to prevent their running at deer. Subsequently, in *Beckwith* v. *Shordike* (1767) 4 Burr 2092, an owner was only held liable when his dog killed a deer on the grounds that the dog was taken on to the land itself by its owner who was the real trespasser. And the dog may not be shot except where an attacked human being is defending himself, or in defence of valuable property and could not otherwise be prevented—for example, fowls being worried (*Janson* v. *Brown* (1807) 1 Camp 41); trespassing hogs (*King* v. *Rose* (1673) Freem. K.B. 347). The dogs which created so much of the trouble to the legal world in the 17th and 18th centuries seem to have been mastiffs, a breed of which one hears very little now, so apparently then was when that

species of dog had his day. Apparently dog spears may be set but not attractive baits near a highway, nor poison baits. Generally speaking, dogs, like other domestic animals, do not involve their owners in liability unless the owner has *scienter, i.e.*, a knowledge of his animal's ferocious temperament. From which presumably arises the idea that every dog is entitled to one bite.

Under the Dogs Orders every dog while in a highway or place of public resort must wear a collar with the name and address of the owner inscribed on it or on a plate or badge attached thereto, and if found in a highway or place of public resort without such, it may be seized and render its owner liable to a fine not exceeding £50. There is an exemption for hounds. Importation is of course prohibited and local authorities, *i.e.*, those which are authorities for the Diseases of Animals Acts, have certain powers with regard to the making of orders under the Control of Dogs Order, 1930 with regard to control between sunrise and sunset, as to enforcement and also as to quarantine enforcement.

This climbing into a favoured position can be shown in that whereas to steal a dog was not an offence at common law, it is punishable now upon summary conviction with six months' imprisonment, and to advertise publicly suggesting that the advertiser won't ask any questions renders him liable to conviction and a fine. Even when the dog strays, he is looked after. The police officer may seize and detain the dog if he believes him to be a stray, but the policeman must serve notice in writing on the owner where the dog has a collar with an address on it or if the owner is known, and he has to be entered in a register. Similarly, with a dog there is no question of "findings keepings" for any person who takes a stray dog must forthwith return it to its owner or take it to the nearest police station and inform the policeman where it was found. Failure to do so renders the finder liable to a fine. It took a very severe emergency of a war to render an owner of a dog liable for his dog straying on to an allotment and forcing him to show that he had taken every step possible to prevent it.

It may be that man must live by the sweat of his brow, but not so the dog. He improved his position during the 19th century so that any person who uses a dog, or any permitting owner, to draw or help in drawing any cart, carriage, truck or barrow on any public highway is liable to a penalty of 40*s.* for the first, and £5 for any subsequent offence.

Again, to local authorities dogs may be a considerable nuisance. They invade their gardens, and possibly in the pursuit of some riper morsel, dig up or damage plants. The byelaw in this connexion is rarely very helpful, and the person is only liable if he causes or suffers his dog to enter or remain in the pleasure ground unless such dog is under proper control. Usually the offender is the stray dog, perhaps turned out for the day, and the writer has never found park keepers particularly anxious to secure the dog and its owner's name and address from the collar, if there is one. This nuisance is not however restricted to local authorities because under the ordinary good rule and government byelaws, whereas it only takes one householder to stop a man from playing on a musical or noisy instrument in the street, it takes three householders and 14 days' notice before proceedings can be taken to stop any person from having a noisy dog within earshot.

With Christmas well over and March upon us thoughts again turn to licences, and a month like March is often a favourite. Whereas a dog licence lasts for 12 months from the first day of the month in which it is taken out, no person may keep a dog (with one or two exceptions) without a licence when the dog has achieved the age of six months. Here again the dog has consolidated his position. The fee was increased from 5*s.* to 7*s.* 6*d.* by the Customs and Inland Revenue Act of 1878, but there it has stayed, and one would imagine that 7*s.* 6*d.* in 1878 was probably £2 today. Licences, forming part of the local taxation revenue, are revenue of county and county borough councils.

ROAD SAFETY

By PHILIP J. CONRAD, F.C.I.S., D.P.A. (LOND.), D.M.A.

Before 1957, road safety activities by local authorities were governed by Ministry of Transport circ. 690 of May 14, 1953, which indicated that the Minister would make grants from the Road Fund towards approved expenditure. When anyone asked under what statutory authority local authorities were empowered to incur expenditure on road safety, it had to be admitted that none could be found. The explanation advanced was that it appeared that local authorities who were highway authorities (thus excluding rural district or parish councils) had power so to do by virtue of their general powers as such. Hence, road safety was perched on a shaky foundation and, notwithstanding the official recognition represented by the existence of grant aid, it was desirable to regularize the position.

The opportunity to put this important local government function on a strictly lawful footing was taken in the Road Traffic Act, 1956, s. 5 and sch. 2 being devoted to that purpose. These provisions came into operation, by an order of the Minister of Transport and Civil Aviation, on January 1, 1957, and a fortnight later the Minister issued circ. 730 which supersedes circ. 690, and governs the position henceforth under the new law.

Examining s. 5, we find that subs. (1) enacts that the Minister may provide for promoting road safety by disseminating information or advice relating to the use of roads. Section 54 defines "road" as any highway and any other road to which the public has access.

Subsection 2 empowers a local authority—defined for the purposes of the section by subs. (5) as the council of a county, a borough, or an urban district—to make arrangements for such purposes or for giving practical training to road users generally or specially, and to make contributions towards the cost of arrangements for like purposes made by other authorities or bodies. There is provision for Exchequer contributions and the Minister states, in his circ. 730, that he proposes to make grants at the rate of 50 *per cent.* of approved expenditure on propaganda and training activities in 1957–8, provided road safety committees have been set up by the local authorities concerned on which, as a minimum, are represented the local authority, the police, the local education authority, and the local representative of the Royal Society for the Prevention of Accidents.

Subsection (3) is designed to deal with the financial situation arising from the fact that road safety expenditure in

rural districts would normally be chargeable over the whole county, to the detriment of the boroughs and urban districts which have to bear their own net expenditure. To avoid this result, it is provided that where not less than two months before the beginning of any financial year the Minister, on an examination of arrangements proposed to be made by a county district council, is satisfied that they are likely to be effective and notifies the council accordingly, then from the beginning of that year until notification to the contrary the expenditure of the county council in respect of the cost of road safety arrangements or contributions shall not be chargeable on the county district council.

Subsection (4) makes effective sch. 2 to the Act which, as briefly summarized at 120 J.P.N. 790, provides conditionally for the payment of travelling and/or subsistence (but not financial loss) allowances in respect of attendance at designated road safety conferencees and meetings, whether by members of local authorities or by co-opted members of any designated road safety committee established under the Act. Such expenditure ranks for grant. Paragraph 2 (*a*) of part II of the memorandum accompanying circ. 730 refers to forthcoming regulations and designations thereunder.

Earlier, in the body of the circular itself, the Minister stresses the importance of a vigorous local campaign, and expresses appreciation of past work, coupled with the hope that local initiative and energy will yield even more effective results now that powers exist to undertake road training as well as road safety propaganda. Words of economy are, however, still with us.

The memorandum enclosed is a mine of information, broken down into four parts giving *inter alia* details of the types of activities on which expenditure will be recognized for grant, together with some of those which cannot be accepted. The examples quoted are not exhaustive, and applications for grant on other propaganda or training schemes will be considered on their merits.

A point of some importance emerges in part I of the memorandum (para. 4). Here it says—"Under subs. 3 . . . the expenditure on road safety activities by county councils shall not be chargeable on the area of a borough or urban district council which is itself carrying out a road safety scheme . . ." By implication, it is plain that if a scheme is not being carried out this relief will not apply. Similarly, but by categorical statement in this case, notification that the Minister is no longer satisfied that a road safety scheme is likely to be effective nullifies such relief with effect from the end of the financial year in which the notice is given or, if it is given in the last two months of a financial year, at the end of the next financial year. These financial arrangements represent a subtle method of encouraging road safety in towns, since otherwise the county district councils will find themselves contributing towards any county expenditure incurred in the rural districts. The amount included in the county precept for this purpose could conceivably equal or exceed any previous or future expenditure on road safety devoted exclusively to the non-county borough or urban district.

Still in part I (para. 4) of the memorandum, we observe that notification that the Minister is no longer satisfied that a road safety scheme is likely to be effective will be issued to a county district council which ceases to submit estimates for road safety purposes. The purpose is plain, even though the phraseology looks strange. Administratively, however, a cancellation of the previous notification of satisfaction is necessary, and this is the best way of achieving it. Where there has never been any town road safety scheme, this procedure of notification does not arise.

The Minister's first notification, for the purposes of subs. (3), will generally be given simultaneously with the approval of a local authority's first estimate for road safety grant under the terms of the memorandum. Notifications will, however, be issued to local authorities submitting, or having submitted, estimates under the terms of circ. 690 at any time during the current financial year. In all this business of notifications under subs. 3, the county boroughs are, of course, in their usual strong and independent position.

One other fact worth mentioning is that expenditure must be at least £20 or more in order to rank for grant. If actual annual expenditure is allowed to fall below £20, the grant is wholly forfeited for the year in question. This is a point to be remembered by those small authorities who strictly limit their expenditure in the road safety sphere.

SAMPLES AND ANALYSES

[CONTRIBUTED]

The decision in *Trent River Board* v. *Sir T. & A. Wardle, Ltd.* reported in *The Times* of January 18, 1957, appears to reveal an interesting, and in some ways, disturbing, legal position. It had been alleged by the River Board that the respondent company had caused to flow into a tributary of the River Churnet liquid matter to such an extent as to be injurious to fish, contrary to s. 8 (1) of the Salmon and Freshwater Fisheries Act, 1923.

On the date of the alleged offence a water bailiff employed by the Board took a sample of liquid as it fell from a pipe from the company's premises into the tributary, but the requirements of s. 15 (2) of the River Boards Act, 1948, were not complied with.

This section reads as follows: "Section 15 (2). The result of any analysis of a sample taken under this section shall not be admissible as evidence in any legal proceedings in respect of any effluent passing from any land or vessel unless the following requirements have been complied with, that is to say the person taking the sample shall forthwith notify to the occupier of the land . . . of his intention to have it analysed, and shall then and there divide the sample into three parts . . . and shall deliver one part to the occupier of the land . . . retain one part for future comparison, and if he thinks fit to have an analysis made submit one part to the analyst . . ."

At the hearing before the magistrates it was agreed that as the requirements of this section had not been complied with the results of an analysis could not be adduced in evidence, but the Board contended that they were entitled to call evidence of a qualified biologist as to the effect on fish of putting one into water containing part of the sample. For the defendant company it was submitted that, though this was not evidence of an analysis, the principle was the same, and that to admit the evidence would be unfair to the defendants, who, not being in possession of part of the sample taken by the bailiff, could not call any evidence by way of rebuttal.

The justices declined to admit the evidence, but in view of the importance of the point agreed to state a case for the opinion of the High Court.

On the hearing of the case the Lord Chief Justice said that it might be that one simple method of proving that the water was injurious to fish would be by having an analysis made of a sample, when the provisions of s. 15 (2) of the Act of 1948 would apply. It was for the prosecution to prove their case in any way they chose. His lordship could not see that the method used by the water bailiff was open to objection, as he did not make an analysis which meant dissecting the sample into its constituent parts. It was open to the prosecution to say "We saw this water coming from the defendants' premises; there were a large number of fish dead in the river; we took this water and put other fish into it and they died." There was no reason why that evidence should be excluded. The justices were wrong in excluding the evidence and the case should go back to them.

Mr. Justice Cassels, agreeing, said that if s. 15 (2) had read "The result of any experiment with or sample taken . . ." the argument of the defendants might have been easier. Mr. Justice Lynskey, agreeing, said that he wished to reserve his opinion whether s. 15 (2) applied to prevent the giving of evidence of the result of a chemical analysis of the sample. The Lord Chief Justice and Mr. Justice Cassels associated themselves with that reservation.

The dictum that it was for the prosecution to prove their case in any way they chose, coupled with the decision of the Court, may at first sight seem comparatively unimportant, nor, as the case has yet to go back to the justices for further evidence to be taken, would it be proper to comment on the particular matter.

When, however, one compares s. 15 of the River Boards Act, 1948, with sch. 7 to the Food and Drugs Act, 1955, and ss. 92 to 94 of that Act, it will be noted that although the provisions of the latter are much more elaborately stated, the general principle is the same, *i.e.*, division of samples into three parts, *etc.*, one of which is to be handed to the person from whom the sample was taken. If therefore a sampling officer decides to have an analysis made of (say) milk, before evidence of the results of such analysis are admissible as evidence there must be, in the interests of the defendant, or a possible defendant, certain prescribed steps taken beforehand.

Now, however, it seems that a back door has been opened whereby, provided it is not sought to put in the results of an analysis, the prosecution may seek to prove its case without the necessity, provided by Parliament, of dealing with samples in a particular manner.

Thus a sampling officer might obtain from a milk seller a sample of milk intended for sale for human consumption without complying with the requirements of the Act of 1955 as to samples. In due course a prosecution is launched, and to overcome the objection by the defence as to the manner of the taking of the samples evidence is called by a physicist or a chemist that he did certain tests, such as boiling it, freezing it, taking the specific gravity, etc., and that in his opinion the milk contained added water. The evidence is admissible, and as the defendant, through not being provided with a part of the sample, will be unable to call other expert evidence by way of contradiction, conviction must almost inevitably follow.

The Divisional Court, by its decision, has drawn the attention of Parliament to a flaw in the law which could operate most unfairly against a defendant, and although the legislature may well say, in the words of W. S. Gilbert, through the Mikado, "It's the slovenly way these Acts of Parliament are drawn up: we'll have it put right—next session!" it is to be hoped that it will be rectified both in the River Boards Act and the Food and Drugs Act without undue delay.

MISCELLANEOUS INFORMATION

BERKSHIRE PROBATION REPORT

Although up to 1954 there was a decrease in the number of adults appearing before the Berkshire courts, the number placed on probation increased. The number of persons remaining under supervision on September 30, 1956, was 552—the highest number ever recorded in the county. In 1955 the number was 495, against 467 in 1954, and 464 in 1953.

One of the reasons for the increase in the use of probation, says Mr. E. F. Lapworth, principal probation officer in his annual report, has undoubtedly been the rapid expansion of the Berkshire probation service. Records show that the appointment of the first whole-time probation officers in 1938 was followed by an immediate increase in probation work in the courts, as the justices recognized the value of the probation system and were able to make greater use of it. Early in the year it was realized that two officers had excessive case loads, and the probation committee remedied the position by the appointment of an additional whole-time officer.

Thirty-seven persons were placed on probation for one year, 152 for two years and 58 for three years. It appears that the opinion is gaining ground that two years is generally the right period, bearing in mind that when it transpires that so long a period is not necessary it is always possible for the court to discharge the order.

It is interesting to note that in the courts of Assize and quarter sessions held in Berkshire 24 *per cent.* of the total convicted were placed on probation, compared with 19 *per cent.* during 1955.

The number of matrimonial cases, after-care cases and social inquiries remains about the same as in the previous year. Of the matrimonial cases dealt with by probation officers 61 *per cent.* were as a result of a direct approach by the public to the probation officer.

It is becoming the custom, and a very good custom it is, for probation officers to give talks to various organizations and thus to inform members of the public of the nature and purpose of their work. Mr. Lapworth says that at the meetings in Berkshire audiences showed great interest and asked many questions. He goes on "Occasionally we are expected to have some knowledge of outside subjects, such as horticulture. One officer, after accepting an invitation to speak to a Women's Institute, received a further letter asking whether he would be prepared to judge a competition for the best six pea pods grown by members of the Institute." Having taken expert advice, the officer was able to discharge this duty and, apparently to give complete satisfaction.

REHABILITATION OF THE DISABLED REPORT OF DEPARTMENTAL COMMITTEE

The establishment of resettlement clinics at every major hospital to give advice and guidance to disabled persons whose cases are specially difficult is one of the 46 recommendations made in the Report of the Committee of Inquiry on the Rehabilitation of Disabled Persons. The Committee, which was set up in 1953 under the chairmanship of Lord Piercy, says that its conclusions and recommendations now bring together in one place an account of the services which a disabled person may readily expect to receive. The hope is expressed that its proposals for assessment of the needs of disabled persons will help to secure the State against waste and abuse and a call is made for the active co-operation of the disabled themselves. The Committee rejected the suggestion of a National Corporation to be responsible for the disabled at all stages.

Apart from the expansion of the welfare services of local authorities, the Committee did not find it necessary to recommend developments involving either great capital expenditure or great increases in staff. Moreover, the Committee considered it was dangerous to assume that more effective services can be brought about solely or even mainly, by increased expenditure, because some of the best work in the rehabilitation field has been done by relying upon the capacity to inspire the

disabled to help themselves and the intelligent adaptation of available materials.

The committee contrasted its report with that of the Tomlinson Committee of 1943, when questions of employment of disabled persons were uppermost. Now the facilities in this respect are well established. On the medical side, the concept of rehabilitation has widened and deepened even if it has still much way to make in practice. Although not perfect or fully used, the statutory provisions for the disabled are notably complete. A tribute is paid to the standard of service of those concerned in rehabilitation, both in the public service and voluntary organizations. It is emphasized that the provision by the statutory authorities of services to the disabled does not remove the need of voluntary service; there remains a vast field for personal service in meeting individual human needs. The Committee concludes that an improvement of knowledge among the general public of the range of services available for handicapped persons, of the impressive achievements of these services and of the ideals and aims of rehabilitation would be of great public benefit. It would improve the climate of public and neighbourly opinion in which the disabled person has to meet and be helped to overcome his disabilities and it would provide a stimulating background for voluntary personal service in this field.

The report states that no national figures of disabled are available except for those in the employment field. Even these figures are incomplete because of the voluntary nature of registration. Even less is known of the numbers of disabled needing rehabilitation. But Ministry of Pensions and National Insurance statistics relating to certification of incapacity suggest that the number of people who might benefit from rehabilitation is considerable. For this reason the Committee recommends that inquiry be made to find out how many persons in receipt of sickness benefit for more than six months could be assisted to return to work if suitable rehabilitation facilities were available.

It seemed to the Committee that there was room for substantially greater use to be made of existing provisions for speeding up the return to work of those temporarily or permanently handicapped by injury or disease and for some increased provision to be made for this purpose.

Medical and Hospital Services

After emphasizing the importance of the medical contribution to rehabilitation and describing the hospital services available the Report accepts the view of the British Medical Association that consultants are still slow to consider the rehabilitation needs of their patients and that further education of the medical profession, including medical students, is much needed. The growing provision in occupational therapy of more realistic occupations is commended, including the development of advice and help to disabled housewives. The Committee recommend that hospital boards should review and reorganize their present arrangements so as to secure a purposeful graduated programme of activity designed to restore full activity and to reorient the patient's outlook from that of an invalid to that of a responsible worker.

It is pointed out that the social work in the hospital service by the almoner and the psychiatrist social worker (the latter mainly at mental hospitals and also at some general hospitals) is of particular importance in the rehabilitation of the patients both in providing information for the doctor about the patient's social or industrial background as problems and their solution during the period of hospital treatment and in assisting the patient on discharge to adjust himself to any necessary changes in home living or work and to take advantage of welfare and other services provided by other authorities. In view of the shortage of social workers it is essential that they should not be employed on duties which can be discharged by others; it is thought that there may be room for the employment of less highly qualified assistants to carry out some aspects of hospital social work.

The Report stresses the importance of the careful assessment of a disabled person's incapacity and of ensuring that he is put in touch with those outside the hospital best able to help him, and that there is close consultation between the doctor and disablement resettlement officer or welfare officer where written medical information is insufficient.

Of the general practitioner the Report says the patient will be served most effectively if the practitioner takes on a fuller responsibility for rehabilitation than he does now. The Committee thinks that many general practitioners are insufficiently informed about the rehabilitation facilities available to them locally and recommends that by various means they should be encouraged to play their full part in rehabilitation.

Welfare Services

Describing the welfare services of local authorities the Report says it is clear that only the fringes of the field have yet been touched. Local authorities' responsibilities are:—

(*a*) to cater for the social needs of the disabled in the employment field, and

(*b*) to meet social and occupational needs of other disabled persons.

The Committee was informed that at January 30, 1956, 110 out of 146 local authorities had made schemes for services but developments had not yet reached the stage at which the authorities were involved in substantial expenditure. The total amount spent by local authorities for the year ended March 31, 1955, on services for the disabled other than the blind and partially sighted was only some £250,000 as compared with £2·4 million spent in the same period on the blind and partially sighted. The Act gives local authorities very wide permissive powers to make provision for the welfare of disabled persons and on the evidence received by the Committee there was no doubt that there was need for fuller and better provisions and scope for considerable developments.

It is emphasized that the handicapped person should be enabled not just to live in the community but to be able to contribute to it by work if that be possible and by playing a part in whatever social life exists around him. In particular his self confidence and self respect must be restored or developed. One of the most valuable services that can be rendered to him is to implant in him a feeling that he matters and that his well-being is of concern to the community. There should be guidance on the various means which exist to help the physically handicapped in their everyday life and so forth. For some, the most material help which can be given to them will be the provision of living accommodation which, as described in a circular of the Ministry of Health should be a substitute for the normal home and must meet all reasonable needs of the resident. Those who are able to work should be guided to the proper agencies through which remunerative employment may be obtained. For others useful occupations in centres or at home is needed. This will also include assistance in the marketing of the products so made.

The Committee believes that there should be closer co-operation between welfare and medical services, particularly to help patients discharged from hospitals. It is suggested that a suitable officer might be nominated by the local authority to visit the hospital regularly and attend conferences designed to assist the welfare needs of particular patients and to give guidance in specially difficult cases. The welfare authority would then from the outset gain a deeper insight into the disabled person's limitations and potentialities; the hospital would benefit from the expert advice on the help which could be given to the patient through the social welfare services. From time to time officers of the welfare authority might consider that expert and special guidance is needed in difficult cases encountered in their work. The hospital resettlement clinic is clearly a likely source for such guidance.

Local authorities are already beginning to provide centres for occupational and social purposes either directly or through voluntary organisations. These should include as one of their main objects the meeting of the need of the disabled person outside the employment field. The local authority should do everything possible to set up or encourage the formation of day clubs or centres where the severely disabled can not only find social companionship together with some diversional occupation but will also be provided with training in the techniques for overcoming their handicap and in performing their daily activities. Not least the advantage of such centres would be to afford some relief to the fit members of the disabled person's household.

Welfare authorities have the power to make adjustments in the homes of the disabled. In this connexion it is emphasized that those responsible for new local authority housing schemes should bear in mind the needs of the disabled. Some of the accommodation should be specially designed without steps and with wider doors to allow the passage of wheeled chairs.

Reference is made to the needs for additional hostel accommodation for the disabled (1) as short-stay hostels for disabled persons leaving hospitals but not yet fit for ordinary living accommodation and (2) as permanent hostels or homes for the more dependent disabled. Provision for these can be made under s. 21 of the National Assistance Act, 1948. Up to the present local authorities have tended to concentrate on providing accommodation for permament residents but it appeared to the Committee that the stage has now been reached where they could with advantage devote some of their resources to providing short-stay hostels. It is emphasized, however, that in the case of certain disabilities such as tuberculosis and mental deficiency they would need, before doing so, to consider their powers as local authorities.

The Disabled Persons Register

The Committee did not accept a suggestion that registers of disabled persons kept by the Ministry of Labour and local authorities should be combined; although close co-operation is essential. The more radical suggestion that all disabled persons should be compelled to register was rejected.

The conclusion is reached that more would have been done in the development of welfare services since 1951 if help from central funds had been available and the Committee, whilst appreciating that developments can only take place gradually and having regard to the nation's ability to pay, therefore recommends that local authorities should be granted aid by the Exchequer in respect of welfare services provided for the disabled under the National Assistance Act. It is tentatively estimated that the cost might be about £6,600,000 annually.

On the conditions for registration the Report concludes that the present conditions need no amendment but ought to be interpreted strictly. The suggestion that registration should depend on a percentage degree of disability is rejected because it is the effect of disability on employment which is to be determined.

Remunerative Employment under sheltered conditions

The view is held that sheltered employment can only be second best to employment in ordinary conditions and that those who take up sheltered work should be encouraged to go into ordinary work as soon as possible whilst those employed in sheltered work should be willing and able to make a significant contribution to production. It is thought that a clear distinction should be drawn between the disabled capable of employment and those only able to engage in work to keep them occupied.

It is recommended that local authorities should continue to have a duty to provide work under sheltered conditions for the blind but under powers derived from the Disabled Persons (Employment) Act, instead of under the National Assistance Act; for the tuberculous the Committee recommends that this power should similarly be derived from the Disabled Persons (Employment) Act, and not as at present from the National Assistance and National Health Service Acts.

Special classes of disabled

The Committee was generally satisfied with the present arrangements for identification of disabled children and, subject to some tightening up of procedure, with the provision of education in hospitals and elsewhere.

The criticism that many disabled young persons took up employment either unsuitable or without much future is examined. In present conditions work could often be secured without recourse to the Youth Employment Service, but the Committee was averse to disabled school leavers being compelled to use it, preferring to rely on the schools, parents and others being made aware of the advantages of the service offered. Reference is made to the need for close co-operation between the Youth Employment Service and the schools and between this Service and the D.R.O.s. The suggestion that the Youth Employment Service might have specialist officers to deal with the disabled is not supported.

The conclusions of the Report of the Working Party on the Employment of Blind Persons in 1951 are generally endorsed. The value of social and industrial rehabilitation in residential centres is recognised, and a recommendation made that expenditure incurred by local authorities on social rehabilitation should rank for grant.

The Committee refers to the present unsatisfactory patchwork of placing services. It recommends that the Ministry of Labour should take over this responsibility

It is recommended that educational facilities should be made fully available to tuberculous patients in hospitals, and that enquiries should be made to ascertain whether part-time training of those discharged from sanatoria might be provided on a wider scale than at present. The work done by village settlements is discussed and commended. At the same time the suggestion is made that in many cases the provision of hostels for those in work would be a satisfactory alternative. Finally on this aspect of the problem it is recommended that some inquiry should be made, on the basis of chest clinic registrations, to ascertain if tuberculous persons return to work as early as practicable.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

EXAMINATION AND TREATMENT OF PRISONERS

Dr. B. Stross (Stoke-on-Trent, C.) asked the Secretary of State for the Home Department whether he would institute procedure whereby every prisoner on entering prison would be fully examined in order to ascertain his full case history and to assess his personality in order that planned treatment would be available.

The Under-Secretary of State for the Home Department, Mr. J. E. S. Simon, replied that such procedure already existed, and for prisoners sentenced to corrective training or preventive detention was carried out at an allocation centre with a specialised staff. For those sentenced to imprisonment it was not possible, pending the establishment of remand and observation centres, to carry out personality assessment on an equally satisfactory basis, but the Secretary of State fully appreciated the importance of that question and would keep the possibility of improving techniques under constant review.

In reply to another question, Mr. Simon said that all prisoners were medically examined on reception. Where the nature of the offence or other considerations suggested the need for special mental examination, the medical officer would make such an examination and, where there was a psychologist in post, he would also have a psychological report.

SENTENCES

Mr. Marcus Lipton (Brixton) asked the Secretary of State for the Home Department how he ensured that prison governors were correctly informed of the sentences to be served by prisoners in their charge.

Mr. Simon replied that prison standing orders prescribed an elaborate procedure for recording and verifying sentences to be served by prisoners, but in the light of recent experience the Secretary of State had directed that that procedure be reviewed to see whether further practicable safeguards against error should be introduced.

Mr. Lipton: "Is the Under-Secretary aware that despite the elaborate procedure, a prisoner, because of a shocking clerical error, was kept at Pentonville seven and a half weeks longer than he need have been? Will he give an assurance that such a scandalous thing cannot possibly happen again?"

Mr. Simon: "In every human system there is a liability to error. Our task is to ensure that it is minimised to the smallest practicable extent, and it is for that reason that the Secretary of State is directing fresh inquiries into the matter."

Mr. Lipton asked the Secretary of State for the Home Department on what basis he calculated *ex gratia* payments to persons wrongly sentenced or unnecessarily detained in custody.

Mr. Simon replied that the amount of the *ex gratia* payment made to a person who had been properly convicted by a court but who had been mistakenly but not illegally detained in prison for any period as a result of an error by the court or by some public official, would necessarily depend upon the facts of the particular case. The principal factors which were taken into account were the circumstances in which the error had occurred, the period for which the prisoner had been mistakenly detained and his probable earning capacity during that period.

Mr. Lipton said that in the case mentioned £35 was paid to compensate for seven and a half unnecessary weeks in prison, which worked out at £4 13*s*. 4*d*. a week. Was not that a mean and miserable assessment on the part of the Home Office of the value of a man's liberty? Was it not time that the basis was completely revised?

Mr. Simon replied that in the case referred to there was no illegal detention. The figure of £35 was arrived at taking into account the earnings which the prisoner might have been expected to make if he were out of custody. It worked out at just under £5 a week.

PREVENTIVE DETENTION REPORTS

Mr. S. T. Swingler (Newcastle-under-Lyme) asked the Secretary of State for the Home Department (1) if he would take steps to ensure that damaging statements in preventive detention reports by the Prison Commissioners which were not directly relevant to the case before the court were withheld from publication; (2) if he was aware of the damage suffered by Mr. G. W. Parsons as a result of the publication of those parts of the Prison Commissioners' preventive detention report relating to his domestic affairs; and if he would reconsider his refusal to make an *ex gratia* payment to Mr. Parsons in compensation.

Mr. Simon replied that those reports were made to courts and the Secretary of State had no authority to prevent their publication in court. He had reconsidered the case referred to and could find no ground for making an *ex gratia* payment.

Mr. Swingler: "Has the Home Secretary no power or influence with the Prison Commissioners to ensure that when they know that a court is liable to order publication they can withhold from a report presented to the court sections which are defamatory? Is it not entirely wrong that defamatory statements which are irrelevant to the case being considered by the Court be made and that there should be no remedy open to the citizen involved or his relatives who have been slandered?"

PERSONALIA

APPOINTMENTS

The Queen has, on the recommendation of the Lord Chancellor, appointed the following four new recorders:

Mr. Geoffrey de Paiva Veale, Q.C., to be recorder of Leeds.

Sir David Arnold Scott Cairns, Q.C., to be recorder of Sunderland.

Mr. John Megaw, Q.C., to be recorder of Middlesbrough.

Mr. George Stanley Waller, Q.C., to be recorder of Sheffield.

Mr. Veale has been recorder of Hull since 1954. He was called to the bar in 1929. In 1936 he was the youngest man ever to be elected chairman of Ilkley urban district council. During the Second World War he served with The Green Howards and was in the Middle East for four years. He was commissioned and mentioned in despatches. Mr. Veale was appointed deputy chairman of the North Riding quarter sessions in 1949 and made recorder of Scarborough in 1950. He took silk the following year and soon after became recorder of Sunderland. In October, 1954, he was appointed deputy chairman of the West Riding quarter sessions and two months later was made recorder of Hull. He became Solicitor-General of the County Palatine of Durham in January last year and was made Attorney-General of the County Palantine of Durham this year.

Sir David Scott Cairns took silk in 1947, and was then the first Sunderland-born barrister to attain the distinction. He was educated at Bede School, Sunderland, and Pembroke College, Cambridge, and was called to the bar in 1926. He received the honour of knighthood in 1955. He was appointed chairman of the Monopolies and Restrictive Practices Commission in 1954.

Mr. Waller became recorder of Bradford in November, 1955. He was called to the bar in 1934 and has practised on the North-Eastern circuit. He was appointed chairman of the Northern District Valuation Board under the Coal Industry Nationalization Act in 1948, and in March, 1953, was appointed recorder of Doncaster. He took silk in April, 1954, and became recorder of Sunderland the same year. He was appointed Solicitor-General of the County Palatine of Durham this year. During the war he served as a R.A.F. pilot.

Mr. J. Megaw took silk in 1953. He was educated at the Royal Academical Institution, Belfast, and Cambridge University.

Mr. George N. England has been appointed Liverpool deputy stipendiary magistrate in succession to Mr. A. E. Baucher, who has retired on reaching the age limit.

Mr. John William Owen, at present clerk to Rotherham borough and Strafforth and Tickhill Upper petty sessional division justices, has been appointed clerk to Sheffield city and Hallamshire petty sessional division justices, to succeed Mr. Leslie M. Pugh. Before being appointed to Rotherham in 1953, Mr. Owen had 27 years at the Sheffield court house, working successively in all departments and courts. Mr. Owen is 47 years of age and was admitted in 1949.

Mr. F. G. Bishop, assistant town clerk of Ramsgate, Kent, borough council, has been appointed town clerk of Faversham, Kent, as from June 1, next. The present town clerk, Mr. S. Wilson, retires on May 31, after 14 years as clerk to the borough council. Mr. Wilson has been in the employ of the council, either indirectly or directly, for 53 years.

Mr. John David Oldroyd, M.A., LL.B., L.A.M.T.P.I., has been appointed deputy town clerk of the borough of Macclesfield, Cheshire, and will begin his new duties on March 27, next. Mr. Oldroyd is at present assistant solicitor to Burton-upon-Trent county borough council. Mr. Oldroyd served in H.M. Forces from 1946 to 1949 and following the end of the war he was articled to the town clerks of Nuneaton and Stoke-on-Trent, being admitted in June, 1954. From 1954 until 1955 Mr. Oldroyd was assistant solicitor to Stoke-on-Trent county borough and he has been in his present position at Burton since 1955.

Mr. John Hillyard Dent, aged 24, has been appointed as first assistant in the office of Mr. T. D. Andrews, clerk to South Shields justices, in place of Mr. R. Forster, who has moved to Tynemouth magistrates' court, *see* our issue of January 19, last. Mr. Dent has been an assistant in the offices of the clerk of Barrow-in-Furness county borough and North Lonsdale petty sessional division justices since leaving school, apart from two years' National Service.

Mr. W. R. French, who has been assistant warrant officer at Ealing court for the past 11 years, has been appointed senior assistant, grade "A," to the clerk to the justices for the Brentford division of Middlesex magistrates' courts area. Mr. French took up his duties on March 1, last.

Superintendent George Teasdale Nichols, whose appointment as chief constable of Bath we announced in our issue of February 9, last, joined the Metropolitan police in 1933 and was clerical assistant in the chief superintendent's office until 1935, when he attended a police training school. Superintendent Nichols served as a constable for a year and then joined Hendon Police Training College and in 1939 became junior station inspector.. During the war he was an R.A.F. bomber pilot, gaining the D.F.M. and D.F.C. for a low-level attack on the Philips radio factory in Holland and the D.F.C. for operations while commanding a special duty espionage unit. In 1945 he was transferred to the Special Investigation Branch of the R.A.F. as Deputy Assistant Provost Marshal to investigate, in conjunction with M.I.5, alleged cases of treason by R.A.F. prisoners of war. The new chief constable went back to the Metropolitan police as station inspector and became chief inspector in 1951. Two years later he was promoted superintendent, grade II, and in 1954 he became superintendent, grade I, in charge of Tottenham sub-division.

Mr. Gerald Francis Fox, LL.B., D.P.A., town clerk of Tenby, Pembs., has been appointed clerk to Tredegar, Mon., urban district council, and will take up his new appointment on May 1, 1957.

Mr. R. C. Howell, deputy clerk to North Westmorland rural district council, has been appointed to succeed the late Mr. John Harker as clerk. Mr. Howell will continue officially as deputy until the appointed date—the end of March—when Mr. Harker was due to resign for health reasons. A native of Penarth, Mr. Howell was with Penarth urban district council until 1939 and served in the Royal Engineers until 1946. On demobilization, he returned to the Penarth authority as chief accountancy assistant. In 1955, he was appointed deputy clerk and financial officer to the North Westmorland rural district council whose offices are at Appleby, although Mr. Howell's home is in the adjoining town of Kirkby Stephen. He is a married man with two children.

Mr. Geoffrey R. Cottam has been appointed second assistant solicitor to Dudley county borough council. Mr. Cottam holds the degree of LL.B. (Hons.) of Manchester University and passed the Solicitors' Final Examination in November, 1956. Mr. Cottam was articled to the town clerk of Colne, Lancs. He took up his appointment with Dudley council on Monday, March 4, last.

RETIREMENT

Superintendent Peter Griffiths, of Flintshire constabulary, stationed at Rhyl, is retiring after 37¼ years' service. Joining the police at Mold, he served at Connah's Quay, Mostyn, Sealand and Flint. During the war he was at headquarters in Mold in charge of civil defence. Superintendent Griffiths was promoted to his present rank on being stationed at Rhyl nine years ago.

OBITUARY

Mr. Ronald Alfred Gray, assistant solicitor to Bedford corporation, has died in hospital at the age of 58. Mr. Gray had been in indifferent health since August and had been in hospital for varying periods during recent months. Mr. Gray's appointment, in September, 1941, was, in the first instance, as temporary assistant solicitor in the town clerk's office to fill a vacancy that arose under the National Service Act. Before then he had held a similar post with Southampton corporation. He is survived by his wife and one son.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, March 5

RATING AND VALUATION BILL—read 2a.

HOUSE OF COMMONS

Wednesday, March 6

OCCUPIERS' LIABILITY BILL—read 2a.

Friday, March 8

PUBLIC HEALTH OFFICERS (DEPUTIES) BILL—read 3a.

NOTICES

The next court of quarter sessions for the borough of Northampton will be held on Monday, March 18, 1957, at the Court House, Campbell Square, at 10.45 *a.m.*

The next court of quarter sessions for the borough of Shrewsbury will be held on Tuesday, March 26, 1957, at the Shirehall, Shrewsbury, at 11 *a.m.*

THE LOWING HERD

Adaptation is perhaps the most painful process in life. Among human beings the individual has to adapt himself to the ways of the community, as well as to the forces of nature; in those parts of the world inhabited by more than one civilization or race, the weaker (though not always the inferior) must adapt itself to the stronger, or disappear. And writers on evolution have pointed out how certain species of living creatures have gradually, over several millenia, adapted themselves to their environment; those that did so have survived; the unadaptable have died out.

So it is with the members of the animal kingdom in the parts of the world where man has acquired a foothold. Man, generally speaking, is a more adaptable creature than any of the beasts, and that has given him an advantage in the battle with nature for survival. But he is also more ingenious and more cunning than his fellow-animals, with the result that it is they, rather than he, who have had to do the adapting. For the most part it is a man's world, in which, to bolster his morale and still the occasional protests of his conscience, man has devised all sorts of comfortable theories and rationalizations, *ex post facto*, to justify his revolting behaviour towards his fellow creatures, whom for economic reasons he enslaves, kills for food, injures or mutilates in the name of science and sport. He does all this on the logically untenable basis that his is a "superior" species to theirs, that he has certain attributes ("mind," "soul," "intelligence," "morality") which animals lack, and that his "dominion over the fish of the sea, the fowl of the air, and every living thing that moveth upon the earth" is part of the fundamental scheme of things in the universe. It is typical of his thoughtless insolence that he has made little or no effort to ascertain the animals' point of view.

In face of these narrow and pernicious doctrines it is refreshing to turn to the robust humanity of Walt Whitman, who looked at the question of adaptation through other spectacles:

"I think I could turn and live with the animals, they are so placid and self-contain'd;
I stand and look at them long and long.
They do not sweat and whine about their condition.
They do not lie awake in the dark and weep for their sins,
They do not make me sick discussing their duty to God.
Not one is dissatisfied, not one is demented with the mania of owning things;
Not one kneels to another, nor to his kind that lived thousands of years ago;
Not one is respectable or unhappy over the whole earth."

There we have it in a nutshell. Human institutions are obsessed with the questions that Whitman so disliked—morality and religion, property rights and liabilities, respect and obedience, subordination and rank. The common law, when it took animals into account at all, regarded them solely from such points of view—human ownership, the rights and liabilities that ownership implies; warranties on sale; distress damage feasant; trespass by an animal on somebody's field; injuries caused to A by an animal owned by B, and so forth. It was not until very late in legal history that Parliament took any steps to protect the helplessness of animals against the viciousness of man—and very inadequately at that.

"Placid and self-contain'd" is the phrase Whitman uses; these are the attributes he admires. In the whole of the animal world the creature that, *par excellence*, meets that description is the cow. It was not for nothing that the Ancient Egyptians worshipped, under this form, the serene femininity of the great Mother-Goddess Hathor; that in Greece the cow was the animal sacred to Hera, Queen of Heaven, to whom Homer applies the epithet "cow-eyed"—a reference to the large, beautiful orbs through which she contemplates the world. Ruminative, unruffled and sedate; tolerant, patient and submissive, the cow sets an example of behaviour that twentieth-century man—fidgety, turbulent, restless and overwrought—would do well to emulate.

We are glad to find our view supported by the judicial authority of Mr. Justice Stable. The case of *Thorp* v. *King Bros.* (*Dorking*), *Ltd. and Another*, which that learned Judge recently tried in the Queen's Bench Division, is a tragedy of non-adaptation—the failure or refusal of a superior form of civilization to adapt itself to something lower. The judgment does belated justice to a martyrdom in this lofty cause:

> "After running from the market the cow turned into a *cul-de-sac* where, if people had only acted with half as much intelligence as the average cow in circumstances of this kind, it could have been safely retrieved. But a number of people stood on a wall shouting and waving their arms with the object of creating as much disturbance in the cow's mind as they could. The cow, accustomed to the tranquility of the farm, became more and more frightened. . . . However unacquainted with the regulations relating to zebra-crossings, it did seem to recognize a policeman when it saw one. He held out his hand and gave it the appropriate signal, whereupon it turned into a car-park. Hearing a motor-horn, it broke through a cordon, went over the zebra-crossing and knocked down the plaintiff. It was then shot on a piece of waste ground."

His Lordship added that he was satisfied that the cow had never shown any vice—"By the time it knocked down the plaintiff it had been driven frantic by the misguided efforts of human beings, and had become dangerous. Its collision with the plaintiff was not a vicious attack; he happened to be in its way."

Judgment was given for the defendants. The report of the case in *The Times* bears the appropriate headline:

COW UNACQUAINTED WITH ZEBRA-CROSSING REGULATIONS POSTHUMOUSLY EXONERATED.

A.L.P.

CHANGE

I always thought I'd rue the day
When all my locks had turned to grey,
But now I feel I'm bound to say—
It looks distinguished.

And when in course of time the hair
Is then, alas, no longer there,
I don't suppose that I shall care—
Or count my hopes extinguished.

J.P.C.

M. W. P. ACT

Speak of washing dirty linen—
Is there anything so mean
As the claim by certain spouses
Under Section Seventeen?

J.P.C.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Children and Young Persons—*Juvenile courts—Written reports.*

At a recent juvenile court, where home surroundings' reports from the probation officer and the school reports from the local authority are received without being read aloud, copies of the probation officer's reports were handed to the parents in court, but copies of the school reports were not handed to them. It was claimed that the difference in treatment arose because the writer of the probation officer's report was present in court whereas the compiler of the school report was not. Attention was drawn to the Summary Jurisdiction (Children and Young Persons) Rules, 1933, r. 11 (iv) (*c*) as implying that the law recognizes, and provides for the writer of some reports not being present when the court considers them.

It is my opinion that there is no lawful authority for any report to be handed to the parents, but if they are shown one then, in fairness, they should be shown both. RATER.

Answer.

Rule 11, *ibid.*, permits the court to receive and consider a written report from a probation officer, local authority, or registered medical practitioner without the report being read aloud, subject to the terms of the proviso to para. (iv) of that rule. There is no requirement that a copy of a report shall be handed to the parent. Section 43 of the Criminal Justice Act, 1948, which requires that a copy of a probation officer's report shall be given to the offender, or if the offender is under 17 to his parent or guardian, applies only to courts other than juvenile courts.

We see no objection to a copy of such a report being handed to the parent, if the court thinks it desirable, and we think that a court would be justified in showing the parent a copy of one report and withholding another, if it thought fit to do so.

There appears to be no reason why this should be affected by the presence or absence of the person making the report. Rule (iv) (*c*) applies only where the child or young person, or his parent or guardian, desires to produce evidence with reference to the report.

2.—Contract—*R.I.B.A. form of contract (revised 1950)—Final account—Date of tender.*

I should be glad to receive your advice on a matter which has arisen on a final account submitted in respect of a completed housing contract. In accordance with the fluctuations clause of the contract the contractor has submitted a claim for an increase of wages and the first increase claimed is in respect of an award made from February 1, 1954, although the tender was dated January 28, 1954. I have heard opinions that such a claim should not be accepted as the contractor would have had knowledge of and would have made provision for such an increase in the rates of wages in his tender. Clause 25A of the form of contract however speaks of an increase in the rates of wages "current at the date of tender," and in this connexion a further point arises. In common with many other local authorities my council accepted the tender subject to the Minister's approval—thereby making a qualified acceptance and not creating a legal contract. The Minister would not accept the tender figure, and consequently reductions were negotiated with the contractor and a new tender figure accepted by my council and the Minister. It seems to me, therefore, that it can be said that the date of tender in this case was the date the revised tender was submitted to my council for acceptance, which would of course be subsequent to February 1. CATUR.

Answer.

The January tender was in fact before the relevant award, and had it been effective it would have been subject to that award. But it was a conditional tender, and can be disregarded. When the effective tender was made, the award was on record, and was among the circumstances known to the contractor.

3.—Housing (Rural Workers) Act, 1926—*Increase for improvements—Maximum rent.*

I have received an inquiry, whether an increase in rent may be made if improvements are carried out to a house which is subject to conditions imposed on the making of a grant under the Housing (Rural Workers) Act, 1926. The conditions are still in force, and include a stipulation as to the maximum rent. The rent now being paid is the maximum figure.

The owner proposes to lay 80 *yds.* of piping to connect the house to the council's water supply. There will also be a tapping fee.

I have noted the opinion you gave at 120 J.P.N. 511, that a repairs increase under the Housing Repairs and Rents Act, 1954, may only bring the rent up to the maximum fixed under the Act of 1926.

Do you agree that:

(*a*) a similar position results in the case of an improvement, *viz.*, that the rent, if below the maximum fixed under the Act of 1926 may be increased but may not exceed that maximum ?

(*b*) when the conditions expire (1958 in this case) the statutory increase allowed in respect of improvements will then be chargeable from the time of expiry ? P. AGRICOLA.

Answer.

(*a*) Yes.

(*b*) Yes.

4.—Road Traffic Acts—*Evidence—Statement by driver that he was employed by a company as evidence that the vehicle was being used on their business.*

I refer to the first part of the answer given to P.P. 7 at 120 J.P.N. 732, in which you express the view that the driver's statement to the police that he was employed by the company is not admissible as evidence against the company.

While one would agree that such a statement is not proof that the vehicle was at the material time being used on the company's business, surely your answer is at variance with the view expressed in an article entitled "Admissions on behalf of Limited Companies," at 117 J.P.N. 76.

I quote the passage I have in mind:

"A limited company which sends its vehicles out on the road must, it is suggested, be presumed to have made the driver its agent for the purpose of dealing with any emergency likely to arise during the journey; and, therefore, his statements on being stoppped for an offence for which his employers may be made criminally responsible are admissible as evidence against them. All that is actually necessary to be proved in order to implicate the company is that the vehicle is being used on its authority and business, and the police are entitled to question the driver on this point for they may reasonably require to be satisfied that no offence of taking and driving away without lawful authority is being committed. Mere proof of ownership would probably be sufficient in most cases to establish a *prima facie* case against the company and s. 40 (1) of the Road Traffic Act, 1930, requires a driver to give to any constable who makes demand, the name and address of the owner of the vehicle. A corporation operating motor vehicles knows that police interrogation is not an infrequent incident of road travel and it can fairly be taken therefore, that their driver has implied authority to act as their spokesman on such occasions." KAPEL AGAIN.

Answer.

We confess that, in answering the P.P. at 120 J.P.N. 732, we had not the article at 107 J.P.N. 74–76 in mind. Having considered the matter again we prefer on this particular point the answer which we gave at 120 J.P.N. 732. There is no necessary inference that the driver must have been driving, at the time, on the company's business. It is a matter which the prosecution must prove, and we do not think that they can rely, for this proof, on a statement made by the driver, a co-defendant. There is nothing to show that he was authorized to make admissions on their behalf.

The position is different from that of the licensee of a public house who leaves a manager or barman in charge of the premises. In those circumstances, as was said in one case, the person in charge is, for the time being, the licensee's *alter ego*, and the latter is bound by what the former says and does.

5.—Sunday Entertainment—*Cinematograph—To what court or meeting must application be made—Whether can be made at any time.*

This division is an amalgamation of three former divisions, *viz.*:—a borough of 20,000 (formerly having a separate commission of the peace), a small county division of 3,000, and a large county division of 80,000.

Since amalgamation one general annual licensing meeting for the renewal, *inter alia*, of cinematograph licences, has been held annually at the court house serving the former large county area, but ordinary courts are held weekly in the borough court house.

Proprietors of a cinema in the borough wish to apply now for an amendment (by extension) of their hours of Sunday opening.

Should the application be treated as

(*a*) an application to vary, or,

(*b*) an application for a new licence,

and in any event, must either (*a*) or (*b*) above be made at the county

court house at the next annual general licensing meeting, or can (*a*) or (*b*) be made now at any petty sessions held in the borough court house ?

NOLO.

Answer.

Justices derive their power to grant a licence under the Sunday Entertainments Act, 1932, for Sunday cinematograph entertainment by virtue of their power to grant licences under the Cinematograph Act, 1909, a power which they enjoy by delegation from a county or county borough council under ss. 5 and 6 of the Cinematograph Act, 1909. The delegation is to justices sitting in petty sessions, and therefore, in the absence of restrictions or conditions on the subject in the resolution delegating the power, licences may be granted wherever justices may be sitting in petty sessions in the petty sessional division.

The Act contains no power to vary conditions and, in our opinion, the proper application is for a new licence coupled with the surrender of the existing licence.

6.—Town and Country Planning Act, 1947, ss. 23 and 24—*Development alleged to have been more than four years before notice.*

Two years ago my council served an enforcement notice under s. 23 of the Town and Country Planning Act, 1947, requiring discontinuance of the use of certain land within a specified period after the notice took effect which, as stated thereon, was at the expiration of 28 days after service. The person upon whom the notice was served neither submitted an application for *ex post facto* planning consent, nor took action under s. 23 (4). The use which the enforcement notice required to be discontinued is still carried on, and the council are about to take proceedings under s. 24 (3) of the Act of 1947.

The occupier's solicitors have indicated that when the proceedings contemplated by the council come before the magistrates, they intend calling evidence to the effect that the development in question had been carried out more than four years before the service of the enforcement notice, and that, if this can be proved, then the notice was invalid.

As I see it, however, an enforcement notice can only be disputed on this ground in an appeal under s. 23 (4), and evidence such as is now proposed to be put forward is inadmissible in proceedings under s. 24 (3). In short, the opportunity of bringing forward this evidence has now been lost. I should appreciate your views on the matter.

CONGO.

Answer.

The case is not beyond argument. In *Perrins* v. *Perrins* [1951] 1 All E.R. 1075; 115 J.P. 346, the property owner contended that the impugned use had begun before the appointed day. The Divisional Court held that when it " appeared to the local authority " that such use had begun after the appointed day this " appearing " was appealable under s. 23, and therefore that magistrates could not under s. 24 investigate the reality of the appearance. In the case before us, however, the relevant time limit is the four years, later in s. 23 (1), which is not a matter of what appears to the local authority but of what they themselves did in fact. We do not feel confident that the Divisional Court would follow *Perrins* v. *Perrins*, *supra*. Nor should we ourselves have thought the case to be covered by *Keats* v. *L.C.C.* [1954] 3 All E.R. 303; 118 J.P. 545, though we are informed by a learned correspondent that in a case heard by the Divisional Court in January, 1957, counsel for the local authority decided not to resist an argument based on that decision.

7.—Water Supply—*Fountains—Whether part of water undertaking.*

A local authority transferred to a statutory water company, by an order made by the Minister under s. 9 of the Water Act, 1945, the whole of the local authority's water undertaking. In one village there were a number of taps connected to the works of the water undertaking from which the public, including visitors to the village, drew and continue to draw water—the taps are known locally as " public fountains."

The local authority contend that the public fountains were part of the authority's water undertaking. In the company's view they are public pumps or other works " used for the gratuitous supply of water " to the inhabitants of the local authority's district and therefore vest in and are under the control of the authority : *see* s. 124 of the Public Health Act, 1936. The question arises whether the company or the local authority are responsible for the maintenance of the public fountains.

PLUX.

Answer.

On the information given, the better opinion seems to us to be that the taps or public fountains are works within s. 124 (3) of the Public Health Act, 1936, and remain vested in the local authority. We assume no provision is made in the order which indicates that when the order was made these things were treated as part of the water undertaking. For what it is worth, the decision in *Hildreth* v. *Adamson* (1860) 25 J.P. 645 seems to support our conclusion.

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COUNTY BOROUGH OF BURTON UPON TRENT

Appointment of Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor in the Town Clerk's Office at a salary in accordance with N.J.C. scale (£743 2*s.* 6*d.* to £994 5*s.* per annum) dependent upon when the applicant was admitted.

The appointment will be subject to the provisions of the National Scheme of Conditions of Service and the Local Government Superannuation Acts, to termination by one calendar month's written notice on either side and to the passing of a medical examination.

Applications, in envelopes endorsed "Assistant Solicitor," and giving details of present and previous appointments, age, education, qualifications and general experience, together with the names and addresses of two persons to whom reference may be made, should reach the undersigned not later than March 22, 1957.

Canvassing either directly or indirectly will be deemed a disqualification.

H. T. MEADES,
Town Clerk.

Town Hall,
Burton upon Trent.
March 1, 1957.

CORNWALL PROBATION AREA

Appointment of Whole-time Male Probation Officer

APPLICATIONS are invited for the appointment of a whole-time Male Probation Officer for the Cornwall Probation Area.

The appointment and salary will be in accordance with the Probation Rules, 1949–56. The post will be superannuable and the selected candidate will be required to pass a medical examination. The officer will be required to provide a motor car and an allowance will be paid in accordance with the scale adopted by the Cornwall Probation Committee.

Applications, stating age, qualifications and experience, and the names and addresses of two referees, should reach the undersigned not later than the first post on April 1, 1957.

E. T. VERGER,
Secretary of the
Cornwall Probation Committee.

County Hall,
Truro.

COUNTY BOROUGH OF WEST HAM

WEST HAM MAGISTRATES' COURT

Appointment of Justices' Clerk's Assistant

APPLICATIONS are invited for the appointment of a whole-time male assistant in the Office of the Clerk to the Justices. Applicants must have experience in general magisterial work and accounts and be experienced in taking depositions and be capable of taking a court if required. Knowledge of Pitman's Shorthand will be an advantage. Salary—Senior Clerks' Grade C—£727 15*s.* per annum rising by five annual increments to £907 2*s.* 6*d.* per annum plus London Weighting of £30 per annum. The appointment is superannuable and subject to a medical examination.

Applications, in own handwriting, stating age, qualifications and experience, with the names and addresses of three referees, to be received by the undersigned not later than April 1, 1957.

G. V. ADAMS,
Clerk to the Justices
and Clerk to the
Magistrates' Courts Committee.

West Ham Magistrates' Court,
West Ham Lane,
Stratford, London, E.15.

BOROUGH OF HENDON

Town Clerk's Department
Appointment of Legal Assistant

APPLICATIONS are invited for the post of Legal Assistant, Clerical Division Grade I (£533—£595 (Females £474—£595), plus London Weighting £20 or £30 according to age).

The duties will include drafting minor legal documents, making searches and lodging documents at the Companies Office and the Land Registry. Local Government experience and a knowledge of High Court and County Court procedure will be an advantage, but are not essential.

The appointment will be subject to the National Scheme of Conditions of Service, to the Local Government Superannuation Acts and to the passing of a medical examination.

Applications, stating age, education, qualifications, experience and present appointment, and names of two referees, must be delivered to the undersigned by March 29, 1957.

Canvassing will disqualify.

R. H. WILLIAMS,
Town Clerk.

Town Hall,
Hendon, N.W.4.

THE WEST RIDING MAGISTRATES' COURTS COMMITTEE AND THE COUNTY BOROUGH OF ROTHERHAM MAGISTRATES' COURTS COMMITTEE

COUNTY PETTY SESSIONAL DIVISION OF STRAFFORTH AND TICKHILL UPPER

County Borough of Rotherham

Appointment of Whole-time Justices' Clerk

APPLICATIONS are invited from those qualified in accordance with Section 20 of the Justices of the Peace Act, 1949, for the appointment of Clerk to the Justices for the West Riding County Petty Sessional Division of Strafforth and Tickhill Upper and Clerk to the Justices for the County Borough of Rotherham. The two posts will constitute a whole-time appointment, the estimated total population of the County Petty Sessional Division and the County Borough being 215,420.

The salary scale payable will be £2,010 rising by increments of £55 to £2,285 per annum, a sum of £100 per annum being paid additionally as the successful applicant will act as Clerk to more than one Division.

Particulars and Conditions relating to the appointment are obtainable from the Clerk to the West Riding Magistrates' Courts Committee at the County Hall, Wakefield, and completed applications must be received by him not later than April 5, 1957. Canvassing in any form will disqualify.

BERNARD KENYON,
Clerk to the West Riding
Magistrates' Courts Committee.

JOHN W. OWEN,
Clerk to the Rotherham
County Borough Magistrates'
Courts Committee.

March, 1957.

STAFFORDSHIRE MAGISTRATES' COURTS COMMITTEE

APPLICATIONS are invited for the appointment of an Assistant (male or female) in the office of the Clerk to the Justices for the Borough of Stafford and the Petty Sessional Divisions of Eccleshall, Stafford and Stone.

Candidates will be required to assist in the work of the office generally, as a Court Clerk under supervision, and must be able to keep Court Collecting Officers' accounts. Shorthand typing an advantage.

The post has been designated as General Division Grade II, the appropriate salary scale being £543 5*s.* per annum rising by annual increments of £20 10*s.* to a maximum of £625 5*s.* per annum.

The appointment is superannuable and the person appointed will be required to pass a medical examination.

Applications, together with two testimonials, to reach the undersigned not later than the first post on April 1, 1957.

T. H. EVANS,
Clerk of the
Magistrates' Courts Committee.

County Buildings,
Stafford.
March 16, 1957.

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